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In the Supreme Court of the United States

OCTOBER TERM, 1966

No. 164

AYAKO HONDA, et al.,
Petitioners,

vs.

NICHOLAS deB. KATZENBACH,
Attorney General of the United States,
Respondent.

On Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit

Brief of the State of California as Amicus Curiae

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INTEREST OF AMICUS CURIAE

These petitioners are of Japanese ancestry and are citizens of the United States by birth or naturalization. The great majority of them are residents of the State of California as well. Consistent with the policy of the State of California to redress as far as possible the regrettable injuries suffered by Japanese-American citizens during World War II, the Attorney General of the State of California deems it appropriate to present this brief *amicus curiae* in support of this petition.

As set forth in our Memorandum Amicus Curiae, presented to this Court on June 1, 1966,[1] that policy is represented both by legislative act and judicial decision over the past twenty-five years. We are convinced that a sound legal and equitable basis lies within the power of this Court to continue that policy. We are satisfied that the briefs filed on behalf of these petitioners disclose to the Court a path to such a solution.

Our concern here goes beyond the petitioners who are California citizens. The people of California have a deep and abiding interest in seeing that justice is provided all citizens of this nation.

However compelling and justifiable the circumstances surrounding the original seizure, they are now long past. A continuing sequence of retributory measures has subsequently been enacted—by Congress, this Court, and the courts and Legislature of the State of California. The underlying ethic of this Republic, founded as it was on sure principles of justice and equity, provides a compelling reason for the speedy resolution of this matter in favor of these petitioners.

ARGUMENT

We will not attempt here to augment the legal arguments so capably presented by petitioners' brief. Rather, we will attempt to illuminate more clearly the factual basis upon which petitioners' claim for relief rests.

Several facts perhaps have become obscured in this lengthy litigation:

1. The deposits claimed do rightfully belong to these petitioners. Each of them filed a timely claim in 1946, the

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1. Memorandum of the State of California as Amicus Curiae filed in support of Petition for Writ of Certiorari in this same matter.

first opportunity provided (R. 2). This is conceded by Respondent.

2. Congress unequivocally expressed a policy to return these deposits in the Trading With the Enemy Act.[2] Furthermore, there is little doubt that the Congress which enacted that humane legislation had no intention of subjecting the claimants to a fifteen or twenty-five year delay.

3. Many, if not the majority, of the 7,500 original claimants were elderly citizens laboring under an English language barrier (R. 10-13).

4. The 1958 letter from the Custodian of the Office of Alien Property was a detailed and highly technical directive presenting a confusing array of alternatives and time limitations. In addition to its complexity, its most discouraging aspect was an unequivocal declaration of policy by a high government official that only 2% of the original deposits would be returned.

5. Over 54% of those persons originally sent letters abandoned their claims at that point, either explicitly or implicitly (R. 74). A reasonable inference is that they were completely discouraged by the offer of return (R. 10-13). Without more, the fact that 4,100 out of 7,500 claimants failed to follow the procedure outlined carries its own inference regarding the effect of the O.A.P. letter.

Respondent places great emphasis upon the provisions of the 1958 letter setting out claimants' remedy following publication of the schedule of claims. That remedy basically was the right to file an action in federal court for review of any alleged errors. This was rather a hollow right when we examine a particular case.

The petitioner in whose name this suit was filed, Ayako Honda, was informed in the 1958 letter that she had the

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2. 50 U.S.C. App. § 34 (a).

right under the administrative decision to a return of $9.09 plus interest. This amount represented approximately 2% of her pre-war deposit. We find it difficult to believe that Mrs. Honda would have chosen (1) to wait several years for a schedule to be printed, and (2) to invest several hundreds and perhaps thousands of dollars in litigation fees to recover at most approximately $450.[3]

This is particularly true since the remedy not only necessitated a substantial expenditure of money and delay, but required reversal of the final adjudication of a high administrative official. This is a decision even attorneys approach with trepidation.

Respondent's argument notwithstanding, the 2% offer did constitute a representation of fact carrying great finality. To an elderly, perhaps illiterate Japanese-American layman, it undoubtedly represented for all intents and purposes the ultimate disposition of his claim.

The most persuasive support for this inference is the alternative offered claimants to recover their 2% in Japan, thereby avoiding a considerable delay. In order to comply with the letter, a claimant choosing to get his money immediately from Japan had to file a Notice of Cancellation of Claim card with the O.A.P. We can imagine no clearer invitation to termination of a claim. When coupled with an offer to return little more than postage costs, the letter certainly encouraged total abandonment. This inference is further supported by the uncontested affidavit of the President of the Japanese Chamber of Commerce of Southern California (R. 18-20).

We are persuaded by the facts set out above that the Government's letter was relied upon by these 4,100 peti-

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3. Other cases present even more persuasive facts, since many of the claims represented only a few cents return. See, e.g., affidavit of Shigeo Kumashiro (R. 13).

tioners as the basis for abandonment of their claims. We feel this was a misleading representation—however unintentional it may have been—when the particular handicaps of these petitioners are considered.

The ultimate settlement reached at the pre-war yen-dollar ratio, of course, was a change of position on the Government's part. Here again, the particular circumstances of these citizens provide persuasive reasons to justify their inaction following the publication of the schedule in 1961. The uncontested representation found in Mr. Mukaeda's affidavit that most of these petitioners had not consulted with an attorney suggests that they were unaware of the need to file an action in 1961. Mr. Mukaeda states that it was general knowledge in the Japanese community that other persons similarly situated had commenced litigation, and that any benefit resulting therefrom would inure to the benefit of all (R. 18-20).

The ultimate issues, therefore, are: (1) whether the humane considerations expressed by Congress in the Trading With the Enemy Act will be effected by tolling the statute of limitations, and (2) whether any prejudice whatsoever will result to Respondent if the equitable principle of tolling is invoked. *Burnett v. New York Central R. Co.*, 380 U.S. 424, 427-28 (1964). On the latter issue, Respondents have made no such contention. To adhere rigidly to the statutory limitations provision would not only be totally inconsistent with well-established principles of equity, but would frustrate the clear intent of Congress.

CONCLUSION

We are persuaded there would be little justice in affirming the lower court's decision. California's concern is not solely with the claimants before this Court. They represent

subsequent generations of Japanese-American citizens as well. Their attitudes toward, and respect for, the institutions of our society of law will be deeply affected by this Court's decision.

We respectfully urge that the lower court ruling be reversed.

Respectfully submitted,

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